

contrary to legal precedent ignored by the examiner as set forth in the applicant's previous response). Now the examiner takes the position, without any citation of legal authority that the use of a computer based simulated annealing method "may simply be nominal." (Office Action dated May 25, 2005, page 3). The subject matter of a claim must be within the "technological arts", which is synonymous with the useful arts. Applicant is aware of no such "nominal use" exception and requests that the examiner provide the legal authority for such a position. Moreover, computer implemented processes have long been recognized as patentable subject matter, and the examiner's arbitrary determination that the use "may simply be nominal" can not transform patentable subject matter into unpatentable subject matter.

Additionally, the examiner's assertion that the recitation of a computer based method does not give meaning to the claim ignores that Claims 2 and 6 are in Jepson format, i.e., the preamble is a limitation, and the body of Claim 13 which references the moves evaluated in the computer based simulated annealing.

Withdrawal of the Section 101 rejections is requested.

The examiner's Section 103 rejections are wholly unresponsive to the applicant's previous arguments present filed in its last five responses to the Office Actions.

With respect to Claim 2, Matheson does not disclose a parameter called "slack time" and thus cannot disclose the claimed results oriented variable of the ratio of trip time to slack time. The examiner citeds to Matheson as disclosing the parameter "slack time". However, the examiner is misreading Matheson. At Col. 26, line 16-19,

Matheson discloses a parameter called "slack time percent parameter" which is a parameter provided by the client and included in an order for providing a cushion in scheduling the execution of the order. On the other hand "slack time" is defined in the present application at page 54, third full paragraph as the accumulation for all orders of the differences for each trip between maximum trip time based on the scheduling window and the minimum trip time based on maximum throttle. Thus, "slack time percent parameter" as disclosed in Matheson, is a different concept than the "slack time" claimed in the present application. Clearly, if there is no disclosure of slack time in Matheson it is not obvious to use the relationship between slack time and total trip time to classify the problem as claimed. Withdrawal of the Section 103 rejections as to Claim 2 is requested.

Likewise, with respect to Claim 6, there is no disclosure in Matheson of using the relationship between total trip time and resource exception to classify the problem. Note that the identification of total trip time and the identification of a resource exception is not a disclosure of a relationship between the two parameters used to classify the problem. The examiner's stated motivation of combining Matheson and Fabre to "improve the speed of convergence on the solution" is provided without reference to the prior art as to where the relationship between these two parameters is disclosed. Withdrawal of the Section 103 rejections as to Claim 6 is requested.

The examiner's statement that he is not aware of the case law that results effective parameters must be recognized as such in the prior art is discouraging in that this case law was brought to the examiner's attention over 14 months ago (Response filed June 24,

2004, page 10). This case law is clearly discussed in the MPEP 2144.05, and the examiner's refusal to acknowledge binding case law and refusal to address applicant's arguments and withdraw the Section 103 rejections is clearly improper.

With respect to Claim 13, the examiner previously took the position that the claimed scaling parameter was not disclosed in Fabre, but it was inherent. (Office Action dated 3/24/04, page 17). However, selecting the opportunities in order does not inherently weight according to the express disclosure of the prior art. For example, in Col. 5, lines 42-45 of Fabre "When the selected opportunity does not enable a plan to be constructed which satisfies all the constraints, the algorithm returns to step 1 to select an opportunity" Thus, the order of selection does not inherently weight. Withdrawal of the Section 103 rejections as to Claim 13 is requested.

The remaining claims ultimately depend from their respective base claims discussed above and are allowable with their respective base claims without recourse to the further patentable limitations respectively recited therein.

REQUEST FOR PERSONAL INTERVIEW

The applicant's representative requests that the examiner contact the undersigned to schedule a personal interview with the examiner and his supervisor to discuss this response.

Respectfully submitted,



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